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# Request for the inclusion of an additional item in the agenda of the sixty-third session

## Abuse of the principle of universal jurisdiction

### Letter dated 21 January 2009 from the Permanent Representative of the United Republic of Tanzania to the United Nations addressed to the Secretary-General

The Permanent Mission of the United Republic of Tanzania to the United Nations in its capacity as the Chair of the African Union has the honour to request, pursuant to rule 15 of the rules of procedure of the General Assembly, the inclusion in the agenda of the sixty-third session of the General Assembly of an additional item, entitled "Abuse of the principle of universal jurisdiction".

The request is made on behalf of the Group of African States.

An explanatory memorandum (see annex) in support of the above request is attached to the present letter pursuant to rule 20 of the rules of procedure of the General Assembly.

I also have the honour to request that the present letter be circulated as a document of the General Assembly.

(*Signed*) Augustine P. **Mahiga**
Ambassador

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# Annex

## Explanatory memorandum

### Abuse of the principle of universal jurisdiction

1. The principle of universal jurisdiction is well established in international law. Universal jurisdiction does not apply to all international crimes, but rather to a very limited category of offences. It allows a State to exercise its domestic jurisdiction to indict and prosecute perpetrators of serious offences such as piracy, slavery, torture, genocide, war crimes and crimes against humanity occurring outside its territory irrespective of the nationality of the perpetrators. The African Union respects this principle, which is enshrined in article 4(h) of the Constitutive Act.

2. Many African States have expressed approval of the principle of universal jurisdiction on a treaty basis, and existing practice shows that many States establish a jurisdictional link with the commission and punishment of such crimes as genocide, crimes against humanity and war crimes. However, the scope and applicability of the principle of universal jurisdiction outside the context of such treaties and outside such jurisdictional links is unclear and remains yet to be settled or determined.

3. Following a request by a Conference of African Union Ministers of Justice and/or Attorneys-General held at the African Union Headquarters in Addis Ababa in April 2008, the Commission undertook a study on the application and scope of the principle of universal jurisdiction. The study dwelt exhaustively on the application of the principle of universal jurisdiction by elucidating the origin, nature, scope, applicability and effects of the concept and a report was prepared and presented to the Assembly of the African Union through the Executive Council in July 2008. The study reviewed the jurisprudence of the International Court of Justice on this issue, resolutions of the General Assembly and declarations and decisions of the African Union relevant to universal jurisdiction. It also examined the legal competence of States applying the principle of universal jurisdiction.

4. The study indicated that there was no dispute or controversy with the principle itself; the only issue was the extent of its application. Furthermore, while the International Court of Justice had not directly addressed and made a determination on the extent and applicability of the principle, judges of the International Court of Justice, particularly in the Arrest Warrant case (Yerodia), had made clear and unequivocal statements to the effect that the application of the principle was limited under international law. The study also indicated that the extent of the application of this important principle has never been discussed at the level of the United Nations. Additionally, there is no widespread State practice.

5. While the African Union fully subscribes to and supports the principle of universal jurisdiction within the context of fighting impunity as well as the need to punish perpetrators of genocide, crimes against humanity and war crimes, it is however opposed to the selective and abusive application of the principle against African leaders. The underlying contention is that any continued abuse of this principle could potentially endanger not only the respect for international law and the conduct of international relations, but also threaten the political, economic and socio-economic development of African States.